

## **Idaho Panhandle NF Objection Issue Summary**

### **Local Government Coordination**

#### **Objectors for This Issue:**

- Shoshone County, **Larry Yergler, Chairman of Shoshone County Board of County Commissioners**
- Benewah County, **Jack Buell, Chairman of Benewah County Commissioners**
- Shoshone County Public Schools, **Robin Stanley, Superintendent of Mullan School District**
- Bonner County, **Mike Neilson, Commissioner**

#### **Objection Issue Summary:**

Local Government objectors raised several issues related to the degree of coordination and involvement they experienced during the planning process. Their perception is that the Forest did not work with them as prescribed in the 1982 planning regulations at 36 CFR 219.7. They assert that their input and involvement was not given due process, they were treated at the same level as the general public, and there was little to no attempt to resolve conflicts between their local plans and the plan revision. All three objectors have passed resolutions in their local jurisdictions granting “coordination status.”

#### **Objection Issue Examples:**

“The BOCC is a subdivision of the State of Idaho and jurisdictionally responsible for the health, welfare and maximize the socio-economic stability of its citizens. The BOCC rejects the notion that the County government it is within the classification of “Public” in this statute and should not have had to its comment letter included with the public’s. Additionally, the BOCC has rarely participated with the USFS during planning process, with its May 1, 2013 letter commenting on the Draft EIS being the most significant and recent. The USFS has failed to demonstrate that any BOCC opinions regarding the planning process were considered in the end product. We see this omission as a violation of 36 CFR §219.4(a), 219.4(a)1(4) and §219.4(b).” [The comment cites section 219.4 of the regulations, apparently from the 2012 planning regulations, which are not applicable in the context of this issue. However, the same concern is applicable to section 219.7 in the 1982 rule.]

“The responsible official was mandated to engage in a collaborative process with the affected counties. In March, 2009 Benewah County invoked coordination which required the County be included in that process. The USFS was notified shortly after that resolution was invoked in the County. The USFS has once again failed to include the County in the requirements of 36 CFR §219.4. With the recent changes to the ROD modifying Alternative B,

the County has not been afforded the opportunity for review, Coordinate management planning or participate in any collaboration, or comment on the proposed changes.”

“Shoshone County invoked coordination March 11, 2009 with Resolution 2009-07, and notified USFS Regional Forester Tom Tidwell in a letter dated June 15, 2009. ...NEPA Statutes elevates standing of state and local government to standards above the general public and give special considerations for the term coordination. In the first paragraph of the above resolution, ...’the Board recognizes its mandate provided in Idaho statutes to (1) protect and enhance the public health, safety, and welfare of the citizens of Shoshone County, (2) protect the tax base and encourage the economic stability of Shoshone County, and (3) encourage mining, forestry, and other primary industries and businesses to promote future growth;’....and continued statements there in, the BOCC asserts equal, not subordinate status under coordination as stated in NEPA, NFMA,FLPMA, ESA, and other federal laws.”

“As a local government representing our constituent’s positions through coordination, all agencies have much broader duties to comply with. Through Congressional declaration, agencies must listen to local input, must analyze local position to determine whether there is conflict between proposed agency action and the local plan or policy and must use good faith effort to resolve any existing conflict to achieve consistency between the proposed plan, policy or action and the local plan or policy.”

“Over a year ago, superintendents and county commissioners from Shoshone County met with Mary Farnsworth expressing our concern about forest management. ...The Mullan School District sent a letter requesting ‘Coordination Status’ in July of 2012 which was followed up with a productive meeting at the Mullan District Office with Supervisor Farnsworth and her staff and we were assured we did not need a formal ‘coordination status’ and that she would, in effect, give all citizens ‘coordination status’ and equal opportunity for input. While there is no objection or complaint to the number of public meetings and public notices provided, our objection is that we feel we were left out of the planning and formulating part of the process other than just given the opportunity to ‘submit comments’.”

## **Summary of Review Findings:**

### **What is required?**

At issue is whether the Forest Service adequately complied with local government coordination requirements at 36 CFR 219.7 (1982) throughout their planning process.

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

## County Coordination Status, Resolutions and Authorities

Congress has passed numerous laws that apply to NFS lands, such as the Organic Administration Act, Multiple Use-Sustained Yield Act (MUSYA), and the National Forest Management Act (NFMA). Under the Supremacy Clause of the U.S. Constitution, state and local law is preempted or overridden to the extent it conflicts with these and other applicable federal laws or impedes accomplishment of the purposes and objectives of these and other applicable federal laws. Moreover, a state or local law that subjects the federal government to state or local requirements is presumptively invalid unless the state or local entity enacted it pursuant to a clear and express grant of congressional authority. Under these principles, local ordinances or resolutions that impose land management requirements on the Forest Service, such as a requirement to obtain local approval before acting or to comply with certain land management prescriptions, are preempted by the Forest Service's land management authorities and are presumptively invalid, as they are not supported by a clear and express grant of congressional authority.

Under NFMA and the planning regulations, the Forest Service is required to coordinate land management planning for the National Forest System with land management planning conducted by state and local governments. However, the Forest Service is not required to adopt recommendations made by state and local governmental entities. In particular, the Forest Service is not required to incorporate specific provisions of county ordinances or resolutions into land management plans or to comply with procedural requirements, such as a requirement to obtain county approval before amending or revising a land management plan. Neither the statutes governing Forest Service land management planning nor their implementing regulations provide for more than an advisory role for state and local governments. The term "coordinating status" is not used in existing authorities. Under NEPA and the CEQ regulations, a state or county/local government may be designated as a "joint lead agency" or "cooperating agency."

Under NFMA (16 USC§1604(a)), the Forest Service is required to:

...develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, *coordinated with* the land and resource management planning processes of State and local governments and other Federal agencies.

(Emphasis added.)

The planning regulations under which the current forest plans were developed and revised elaborate on how the Forest Service must coordinate its planning efforts with those of local governments.

In general, the planning regulations have required that the Forest Service to coordinate its planning processes with those of the state and local agencies. However, neither the NFMA nor the planning regulations require the agency to coordinate the content of the forest plan with the state or county plan. Specifically, the Forest Service is not required either to incorporate the specific provisions of county ordinances into forest plans or to comply with procedural obligations such as those requiring county approval before the planning

decision is made. In short, neither the statutes governing Forest Service planning nor their implementing regulations provide for more than an advisory role for state and local governments. In the end, the Forest Service retains discretion and authority to make forest planning and use decisions.

Nonetheless, local government agencies provide a distinct and vital perspective that is not diminished by the fact that their views are advisory rather than decisional. It is Forest Service policy to facilitate and encourage the full involvement of local agencies in order that their views may be appropriately considered in Forest Service decisions.

### **Planning and NEPA Documents Pre-review:**

Neither NEPA nor NFMA require the Forest Service to provide environmental documents to state and local governments before making the documents available to the public. However, there is no legal barrier to doing so if a Forest Service unit determines the need to involve its local government partners early on in the process. There are also other ways for local governments to be involved early on in the development of environmental documents, by either becoming a joint lead agency, if appropriate, or a cooperating agency pursuant to NEPA.

Federal agencies are directed by the CEQ regulations (40 CFR 1501.2) to consult early “with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.” Under NEPA, the Forest Service responsible official is encouraged to consider granting cooperating agency status to local governments, resulting in the local government having a more hands on working relationship by contributing their expertise and local knowledge to either the NEPA and/or planning process. Cooperating Agency status allows for early and often participation in the NEPA process, including developing of proposed actions and purpose and needs.

### **What the planning record shows**

- Documentation of the work groups was posted on the web during development of the 2006 Proposed Plan. This documentation, as well as documentation of other public meetings, is in the project record. As stated in the Response to Comments section of the FEIS (FEIS, App. G, pp. 344-345), the Forest has made every attempt to involve the public during the long process of forest plan revision.
- News releases were sent to all local papers, mailing lists were built, newsletters were sent, web pages were developed, and public meetings were held in an attempt to keep the public informed of the planning process.
- Various working groups had members from different backgrounds and included the county commissioners. Open houses were held after release of the draft Forest Plan and DEIS to answer questions and share information.
- The IPNF planning staff has been available to talk to people, attend special group meetings, and share information.

- The Idaho Panhandle National Forest released their second draft plan and environmental impact statement for a 90-day public comment period on January 3, 2012. The initial 90-day comment period was extended an additional 30 days through May 7, 2012.

### **Conclusions**

- The Forest Service does need to follow the direction in 36 CFR 219.7 (1982) and while this section of the rule allows for flexibility on how a unit should engage local governments, it is also clear that close coordination should take place.
- It is not evident from the project record or final EIS, exactly what steps and level of engagement was conducted between the Forest and the local governments, other than the statement listing all of the general public involvement opportunities.
- The Forest Service is not obliged to adhere to local government resolutions but should consider their ordinances when reviewing the differences between the Forest Plan revision and the local plans and document inconsistencies.
- The Forest Service needs to continue reaching out to the local governments and search for ways to work together as we move forward with implementation of the Plan.
- The Forest Service need only consider input from local governments. The Agency is not required to incorporate it.

### **Considerations for Dialogue at the Meeting:**

- Ensure compliance with the requirements of 36 CFR 219.7(c) (1982) by including the review of local planning and land use policies in the Final EIS and referenced in the final Record of Decision.
- If there are conflicts identified between the Forest Plan and the local plans, review the conflicts with the counties to attempt resolution. If there is not resolution, then document why in the Record of Decision.
- In addition to the required review of local plans, if documentation is available showing adherence to section 219.7, and the intent behind the regulation, add it to the project record and reference it in the Record of Decision. Examples would be meeting dates, meeting notes, correspondence, etc.
- Work with the local governments to identify other means of being involved as the plan is implemented, including but not limited to inventory and data collection, monitoring, and project implementation.